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SUBJECT: GON AVIATION MINISTER RESTATES CASE THAT VIRGIN NIGERIA AIRWAYS IS A NIGERIAN AIRLINE

REF: ABUJA 1670

Background. Following a September 27 meeting with the Embassy's Economic Counselor, on October 14 GON Aviation Minister Mallam Isa Yuguda presented a lengthy written defense of why the USG should consider the proposed Virgin Nigeria Airways a Nigerian airline. In his letter, Yuguda pleaded that the airline not be affected by or involved in the US-UK dispute over landing rights in the United Kingdom. Yuguda restated his case to Embassy economic officers informally on October 21. End background.

Summary. Yuguda's letter of October 14 (FMA/LU/2004/1/119) was a reply to the Ambassador's interagency-cleared letter of October 4 concerning the planned launch of Virgin Nigeria Airways. In his reply, Yuguda asserted the following points.

-- Nigeria's private sector (Nigerian institutional investors and the Nigerian public) will hold 51 percent of the airline's stock.

-- "Substantial ownership," or "majority ownership," as well as "effective control" of the airline will remain "at all times" with Nigeria or its nationals.

-- The status of Virgin Nigeria is "completely separate and distinct" from the UK-based and -registered Virgin Atlantic Airways.

-- "Nigerian Eagle Airlines PLC" is the name of the registered company concerned and that Virgin Nigeria is "simply a brand name"

-- Virgin Nigeria is not one and the same with Virgin Atlantic. End summary.

The Aviation Minister's unedited reply to Ambassador letter follows below.

Begin quote

[1.] I wish to acknowledge with thanks, the receipt of Your Excellency's letter of October 4, 2004 in respect of the on-going discussion between my Ministry and officials of the United States Embassy on the proposed operation into the United States of America by the newly established Nigerian flag carrier Airline.

[2.] I am particularly pleased to have met with Mr. Joseph Gregoire, the U.S. Embassy Counsellor for Economic Affairs on Monday, September 27, 2004 in my office when I had the opportunity to shed more light on the proposed arrangements between Nigeria and the Virgin Atlantic Limited on the establishment of an entirely Nigerian private sector Airline.

[3.] It is indeed the desire of the Government of the Federal Republic of Nigeria that this new Nigerian flag carrier, will, ab initio operate on certain major routes (including, New York, London, Johannesburg, Jeddah and Dubai) under the existing Bilateral Air Services Agreements. These routes have either been left unutilized for so long or are presently being unilaterally exploited by foreign carriers to the detriment of Nigeria.

[4.] Having painstakingly gone through the content of Your Excellency's correspondence, I consider it most pertinent to provide further clarifications on the matter as certain representations alluded to in the correspondence are unfortunately not reflective of the situation at hand.

[5.] Since the inception of this Administration, several efforts have been made by the Government of the Federal Republic of Nigeria to establish a world class Airline to address the existing lopsidedness in our bilateral operations with other countries and also to compete favourably with other Airlines on some regional and international routes. I was therefore mandated upon my assumption of office, to ensure the establishment of a private sector airline. Following a process of open and

competitive bidding in line with all international norms, standards and rules of transparency, Virgin Atlantic Limited (V.A.L) and Virgin Atlantic Airways (V.A.A) emerged as Strategic Investor and Technical Partner respectively in the proposed Nigerian Flag Carrier.

16. The proposed Airline, as designed, is to be entirely owned and funded by the private sector devoid of any federal Government's equity involvement. To this end, the Nigerian private sector (comprising Nigerian institutional investors and the Nigerian public) are to hold fifty-one (51%) per cent equity in the Airline while the Strategic Investor and Technical Partner (V.A.L and V.A.A), because of the technical expertise and investable funds to be brought into the Airline, are to hold only forty-nine (49%) per cent of the Airline's equity. Indeed, contrary to the representation in the letter under reference, 'substantial ownership,' or 'majority ownership' as well as 'effective control' of the Airline, will at all times remain with Nigeria or its nationals under the envisaged arrangements.

17. Your Excellency, the Airline has been structured in such a way as to conform with Nigeria's obligations under existing Air Services Agreements. The issue of substantial ownership and control by Nigeria and or its nationals was therefore of topmost consideration in the design of the Project. Nigeria is also not oblivious of the Conclusions and Recommendations of the 5th World Air Transport Conference (organized by the International Civil Aviation Organization [ICAO] in Montreal, Canada in 2003) which provided guidance to States on the need for the relaxation of the traditional 'substantial ownership and control' requirement in favour of the designating State having regulatory autonomy over the Airline with the Airline having its registered place of business in the State of designation. It is to be recalled further in this connection that a copy of the relevant Conclusions and Recommendations of ICAO on the matter was made available to the United States Embassy's representatives at a meeting held with my Ministry's officials on 7th September 2004 to further assist in the consideration of the matter. A copy of the minutes of this meeting has also been forwarded to the United States Embassy.

18. In expatiating further on the issue of 'effective control' of the Airline, it is pertinent to mention here that it is the desire of the Nigerian Government, the Nigerian investors as well as the Strategic Investor/Technical Partner that the Airline should be effectively managed and controlled by Nigerians. Amongst the many assurances given by V.A.L. and VAA on this issue include the undertaking that the Airline will employ about twenty thousand Nigerians and the key management team will be employed locally amongst competent Nigerians.

19. In addition to the foregoing, a Memorandum of Mutual Undertakings (MEMU), recently executed between the Government of Nigeria and the Strategic Investor and Technical Partner on 28th September 2004 which inter alia, set the legal framework for the commencement of operations of the Airline contains certain major representations on the employment of Nigerians in key management position to allay the type of concerns being expressed by the United States. Aside from having this provision entrenched in the MEMU (with attendant legal consequences in the event of breach), the Nigerian Government intends to closely monitor this undertaking to ensure full compliance.

110. The United States has also indicated its objection to the proposed utilization by the Airline of aircraft and crew under a wet-lease arrangement. Your Excellency, it is known to all and sundry in the airline business that the use of aircraft on wet lease cannot be economically viable for airline operations generally. The idea of the use of wet leased aircraft is to enable the Airline commence operations as early as possible while arrangements are on-going to procure aircraft for the Airline and prompt deployment of the Airline's crew after requisite training. The intention is that the use of wet leased Aircraft will be kept at a minimal period (for an initial six months to start with) at the early stage of the Airline's operations.

111. Prior to addressing the issue of UK/US existing air services relationship, it is necessary to clarify the status of Virgin Nigeria which is completely separate and distinct from the U.K. based and registered Virgin Atlantic Airways. 'Virgin Nigeria', contrary to the widely held belief is not the name of the registered Company for the Airlines. In January 7, 2004, Nigeria registered a special purpose vehicle company, with the registered name of 'Nigerian Eagle Airlines Plc' with RC No. 501975 for the purpose of running this private sector flag carrier. The shareholders of this Company have so far not opted for a change of its name. 'Virgin-Nigeria' is accordingly not the registered name of the Company but the proposed brand name for the Airline. This brand name (which is still subject to ratification by

all the shareholders of the company when finally in place) is to enable the Airline leverage on the highly successful and world reknown [sic] Virgin brand name.

¶12. Your Excellency, I wish to use this medium to also express my deep concern about the attempts being made by the United States to link Virgin Nigeria, (which as explained above is simply a brand name) with the U.K. registered Virgin Atlantic Limited. Of equal concern is the inference by the United States that Virgin Nigeria is one and the same with Virgin Atlantic Airways of the U.K. thereby connecting the duly registered Nigerian Company with the U.K./U.S deadlocked bilateral air services relationship resulting from the U.K. restrictive market and anti-competition posture.

¶13. In relation to the above, I am of the considered opinion that the United States should kindly consider this matter most dispassionately devoid of any sentiment and not unjustly visit the problems being encountered with the United Kingdom on Nigeria. This is particularly so having regard to the strenuous but modest efforts being made by Nigeria to establish a viable world class flag carrier. At the end of the day, the flag carrier being set up by Nigeria is intended to accord with conditions set by the United States for Airlines flying to and from the United States. I am accordingly most confident that the matter at hand will be favourably resolved. Your Excellency's opening statement in the correspondence under reference that "the Government of the United States is interested in improving air links with Africa and would welcome direct air service between the United States and Nigeria by a new Nigerian Airline" is also indeed most reassuring.

¶14. On the basis of the above explanations and clarifications, I would like to crave Your Excellency's understanding and cooperation, in enlightening further the Government of the United States, its relevant authorities and agencies on the true position of the matter with a view to removing difficulties and obstacles as well as paving the way for the prompt acceptance of the designation of the Nigerian flag carrier. This indeed would go a long way in assisting Nigeria to harness the gains of the Open Skies Agreement signed with the U.S. in August 2000. Nigeria on its own part is committed to the faithful implementation of the Nigeria Open Skies Agreement and has been positively embracing the U.S. requests emanating from this Agreement in the true spirit of the cordial relationship that exists between our two Governments.

¶15. Finally, I wish to extend my profound appreciation to Your Excellency on the interest shown in this matter trusting that Your Excellency will positively intervene in this matter and ensure its early resolution.

¶16. Please be assured of my highest esteem always.

[signed]
Mallam Isa Yuguda
Minister of Aviation

End quote.

Comment. Acting Economic Counselor and an Economic Officer met with Yuguda informally the evening of October 21. During their discussion, Yuguda was insistent, and apparently sincere, in his belief that Virgin Nigeria Airways would be Nigerian owned, operated, and directed. Yuguda reiterated points from his October 14 reply concerning the "Nigerian content" of the proposed airline, and added that shares in the airline will be sold to the public in an initial public offering in Nigeria. Yuguda restated his insistence that Virgin Nigeria Airways should not be permitted to become involved in the current US-UK aviation dispute. End comment.

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